

In The United States Court of Federal Claims

No. 08-271C

This Opinion Will Not Be Published in the U.S. Court of Federal Claims Reporter Because It Does Not Add Significantly to the Body of Law.

(Filed: October 3, 2008)

JEROME L. MORGAN, SR.,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,
John E. Potter, Postmaster, and
UNITED STATES DEPARTMENT OF LABOR,
Elaine L. Chao,

Defendants.

OPINION and ORDER

On April 14, 2008, plaintiff filed a complaint in this case seeking damages relating to various actions that occurred during his employment with the U.S. Postal Service during the 1980s, his treatment by the Post Service and the Department of Labor during the 1990s, and, ultimately, his termination from the Office of Workers' Compensation Program effective January 28, 2001. On August 14, 2008, defendant filed a "motion for summary dismissal," which the court construed as a motion to dismiss for lack of jurisdiction under RCFC 12(b)(1). On October 2, 2008, the court filed, by its leave, a document submitted by plaintiff that the court deemed his response to defendant's motion. For the reasons stated below, the court finds that his complaint is untimely under the six-year statute of limitations contained in 28 U.S.C. § 2501.

Deciding a motion to dismiss for lack of subject matter jurisdiction "starts with the complaint, which must be well-pleaded in that it must state the necessary elements of the plaintiff's claim, independent of any defense that may be interposed." *Holley v. United States*, 124 F.3d 1462, 1465 (Fed. Cir. 1997) (citations omitted); *see also Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1964, 1964-65 (2007). In particular, a plaintiff bears the burden of establishing the court's subject matter jurisdiction. *Reynolds v. Army and Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988); *Hansen v. United States*, 65 Fed. Cl. 76, 94 (2005). Although *pro se* litigants are granted some leeway in the formalities of their pleadings, they are not relieved of this basic burden. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *see also Ledford v. United States*, 297 F.3d 1378, 1381 (Fed. Cir. 2002) (per curiam).

The statute of limitations for claims filed in this court is contained in 28 U.S.C. § 2501, which provides: “Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.” This requirement is jurisdictional, meaning that compliance with it is a condition of the government’s waiver of sovereign immunity. *John R. Sand and Gravel Co. v. United States*, 128 S. Ct. 750, 753-54 (2008); *Pennsauken Senior Towers Urban Renewal Assocs., LLC v. United States*, 2008 WL 4323498, at *3 (Fed. Cl. Sept. 18, 2008). Under this statute, a claim accrues when “all events have occurred to fix the Government’s alleged liability,” and the plaintiff knew or should have known of the existence of his claim. *Martinez v. United States*, 333 F.3d 1295, 1303, 1319 (Fed. Cir. 2003) (en banc) (internal quotations omitted), *cert. denied*, 540 U.S. 1177 (2004); *see also Hart v. United States*, 910 F.2d 815, 817-18 (Fed. Cir. 1990). Under this standard, the most recent of plaintiff’s claims accrued on January 28, 2001, more than seven years before he filed his complaint in this case. Others of his claims accrued long before that. Accordingly, the court concludes that his entire case is time-barred.

Even were this not true, it appears that the court would lack jurisdiction over this case. In particular, this court lacks jurisdiction to review decisions made by the Department of Labor under workers’ compensation program. *See* 5 U.S.C. § 8128(b); *see also Pueschel v. United States*, 297 F.3d 1371, 1374-75 (Fed. Cir. 2002).

Accordingly, defendant’s motion for summary dismissal, which the court deems a motion to dismiss, is hereby **GRANTED**. No costs.

IT IS SO ORDERED.

Francis M. Allegra
Judge